

Applicant : Robert Zhong LU et al.
Serial No. : 09/265,788
Filed : March 10, 1999
Page : 3

Attorney's Docket No.: 08291-482001 / 10254P3

REMARKS

Claims 1, 2, 4-9, and 11-18 are pending. Applicants propose to amend claim 17 to delete a repeated claim element. Although this amendment is made after final, Applicants submit that this amendment would not add any new matter and would place all of the claims in condition for allowance. Accordingly, Applicants respectfully request that the amendment be entered.

Rejection under 35 U.S.C. § 112

Claim 17 was rejected under 35 U.S.C. § 112, second paragraph. Applicants submit that the amendment to claim 17 proposed above would overcome this rejection by clarifying that the two references to further non-ionic surfactant indeed referred to the same material.

Rejection under 35 U.S.C. § 103

Claims 1, 2, 4-9, and 11-18 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Richter (US 5,728,667). Applicants respectfully traverse this rejection.

All of the pending claims are directed to aqueous disinfecting and cleaning compositions that include "a mitigating effective amount of at least one nonionic surfactant selected from alkylpolyglycoside compounds." As noted at page 2, lines 14-18, of the Specification, "there yet remains a real and continuing need in the art for improved cleaning and disinfecting compositions in general, and in specific such compositions which provide at least one . . . of the following characteristics: . . . low irritancy to the end user of the composition . . ." As is also noted at page 2, lines 27-29, the present formulations achieve the desired results and provide a "surprising, . . . synergistic effect not apparent from the prior art."

The examiner correctly points out that Richter disclosed a germicidal light-duty aqueous dishwashing detergent composition. The examiner also correctly points out that Richter stated that "certain nonionic surfactant compositions are known to be generally milder detergents." However, Applicants can find no identification of those "certain nonionic surfactant compositions" to which Richter refers in this statement, and the examiner has not pointed out where such an identification can be found. To be sure, Richter's compositions include 0-40 parts

Applicant : Robert Zhong LU et al.
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Filed : March 10, 1999
Page : 4

Attorney's Docket No.: 08291-482001 / 10254P3

nonionic surfactant (Richter, col. 5, line 10), where the nonionic surfactant can be any of a large number of surfactants set forth at column 7, line 64, to column 11, line 5, or, further, any of the nonionic surfactants listed in McCutcheon's *Emulsifier & Detergents North American Edition*, 1991 (referenced at col. 8, lines 9-10, of Richter). Moreover, alkylpolyglycosides are, indeed, disclosed by Richter (e.g., at col. 9, line 54, to col. 10, line 16, and at col. 10, lines 54-62), but no disclosure is made of the properties (e.g., mildness) of such compounds,¹ let alone of their irritancy or lack thereof vis-a-vis other nonionic surfactants.

As indicated by the Material Safety Data Sheet (MSDS) attached hereto as Appendix A, APG 325 N, an alkylpolyglycoside surfactant, "causes eye irritation" and contact with eyes is to be avoided. More specifically, the MSDS states that APG 325 N produce[s] severe irritation and corneal opacity." On the basis of such statements, one of skill in the art would surely not deduce that alkylpolyglycoside surfactants such as APG 325 N would be useful as mitigating agents. And, yet, that is just the idea on which Applicants invention is in part based.

As described, for example, at page 5, lines 3-20, and at page 11, line 1 *et seq.*, Applicants have unexpectedly discovered that alkylpolyglycosides, known ocular irritants as explained above, paradoxically can be used to mitigate potential ocular irritation caused by aqueous hard surface cleaning and sanitizing compositions containing quaternary ammonium compounds having germicidal properties: "[t]he inclusion of the alkylpolyglycoside compound to the compositions significantly reduces the irritation potential of the aqueous compositions as compared to like compositions which however omit this constituent" (Specification, at page 11, lines 1-3).

There is no suggestion in Richter, or in any other reference of which Applicants are aware, of such a mitigating effect from alkylpolyglycosides. Whether or not Richter may have recognized, in principle, the "importance of a mitigating effect" (as argued by the examiner, Office action, at page 4, last paragraph), Richter in any event did not suggest that alkylpolyglycosides could be used to achieve such an effect. In the absence of any such suggestion, the reference could not have rendered the present claims obvious. Based on what

¹ The examiner alleges that "alkylpolyglycoside is taught as a preferred surfactant by Richter (see col. 10, lines 59-60)" (Office action, at page 4, first paragraph). Applicants submit that the cited passage does not indicate that alkylpolyglycosides are "preferred." In fact, there does not appear to be any statement of such a preference anywhere in the reference.

Applicant : Robert Zhong LU et al.
Serial No. : 09/265,788
Filed : March 10, 1999
Page : 5

Attorney's Docket No.: 08291-482001 / 10254P3

was known at the time the present application was filed, as evidenced by the MSDS attached as Appendix A, one of skill in the art would have been motivated to avoid the use of alkylpolyglycosides in any compositions for which low ocular irritancy was sought.

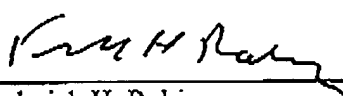
Accordingly, Applicants submit that all of the pending claims are clearly non-obvious over Richter, and request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Attached is a marked-up version of the changes being made by the current amendment.

Applicant asks that all claims be allowed. Enclosed is a \$400 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 20 Dec. 01


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Applicant : Robert Zhong LU et al.
Serial No. : 09/265,788
Filed : March 10, 1999
Page : 6

Attorney's Docket No.: 08291-482001 / 10254P3

Version with markings to show changes made

In the claims:

Claim 17 has been amended as follows:

17. An aqueous disinfecting and cleaning composition in a concentrated form which exhibits reduced irritancy according to claim 1 which consists essentially of:
- a disinfecting effective amount of a quaternary ammonium compound having germicidal properties;
 - a mitigating effective amount of a binary surfactant system which comprises both (a) at least one nonionic surfactant selected from alkylpolyglycoside compounds, with (b) at least one further nonionic surfactant compound which is based on a polymeric alkylene oxide block copolymer;
 - [0.1 - 8%wt of at least one further nonionic surfactant;]
 - 0 - 3%wt. of a polymeric cationic surfactant based on a polyquaternary ammonium salt;
 - 0 - 3%wt. of a builder;
 - 0 - 5%wt. of one or more conventional additives selected from coloring agents, fragrances and fragrance solubilizers, viscosity modifying agents such as thickeners, pH adjusting agents and pH buffers including organic and inorganic salts; and,
 - water to form 100%wt. of the aqueous disinfecting and cleaning composition in concentrated form.